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## ADMINISTRATIVE POLICIES & PROCEDURES

### BUSINESS AND FINANCIAL AFFAIRS

#### General Administration

#### Sec. 700-16: Sexual Harassment Policy

Related Procedure
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Superseded 1/05

*by the Policy on Conflicts of Interest created by Consensual Relationships*

#### References

Civil Rights Act of 1964, Title VII

Education Amendment of 1972, Title IX

UC Policy on Sexual Harassment and Complaint Resolution Procedures

UC Academic Senate Manual

UC Academic Personnel Manual  
Faculty Code of Conduct

UC Resolution on Faculty-Student Relations

UC Policies Applying to Campus Activities, Organizations and Students

Personnel Policies for UC Staff Members

UC Business and Finance Bulletin  
RMP 8, Legal Requirements on Privacy of and Access to Information

UC/UCI Labor Contracts

The Manual of the Irvine Division of the Academic Senate  
Appendix III, Policies on Faculty Conduct and the Administration of Discipline

Evaluation, Review and Appeal Procedures for Residents Appointed and Paid Through The University of California, Irvine, College of Medicine

UC Administrative Policies & Procedures  
Section 700-17, Sexual Harassment Complaint Resolution Procedures

Sexual Harassment Complaint Resolution Procedures Chart

## A. Policy

The University of California, Irvine, is committed to creating and maintaining a community in which all persons who participate in University programs and activities can work and learn together in an atmosphere free of all forms of harassment, exploitation, or intimidation, including sexual harassment. Every member of the University community should be aware that the University will not tolerate sexual harassment and that such behavior is prohibited both by law and by University policy. Retaliation against a person who brings a complaint of sexual harassment is also prohibited. It is the intention of the University to take whatever action may be needed to prevent, correct, and if necessary, discipline behavior which violates this policy. All members of the campus community, including faculty, students, and staff, are responsible for insuring a campus environment free of sexual harassment. Deans, Directors, Department Chairs, and administrative department heads have specific responsibility for participating in the creation of a campus environment free from sexual harassment.

Sexual harassment is unacceptable to the University. It subverts the mission of the University and threatens the careers, educational experience, and well-being of students, faculty, and staff.

Sexual harassment is especially serious when it involves relationships of unequal power such as those between teacher and student, senior and junior faculty, or supervisor and subordinate. Through grades, recommendations for graduate study, promotion, wage increases and the like, a teacher or supervisor can have a decisive influence on the career and the future of a student, faculty or staff member. Instructors, supervisors, and others should be aware that there are substantial risks in an apparently consenting relationship where a power differential exists. Even if there are no obvious conflicts of interest, and both parties have consented or appear to have consented to the relationship, it may result in favoritism or perceptions of favoritism that adversely affect the learning or work environment.

Courts have held that faculty members are to be held to a higher standard than the ordinary "man on the street." As pointed out in the Faculty Code of Conduct, faculty members are intellectual guides and counselors. They must not use their position to cause harm to students for personal or arbitrary reasons. The Resolution on Faculty-Student Relations Adopted by the Academic Assembly of the University of California on November 30, 1983, states that even a "single advance to a student by an instructor can dramatically harm the environment not merely between the student and the instructor but between the instructor and other students in the class or under the instructor's supervision, whether or not the advance is welcomed, invited, or rebuffed" and that, therefore, "even a single occurrence must be regarded by the academic community as a serious breach of professional ethics and proper standards of professional behavior." In addition to this general precautionary statement, consensual sexual relationships between individuals with unequal power are subject to the provisions in J. Consensual Relationships.

Not all sexual harassment occurs between persons of differing power. Sexual harassment may also occur between peers. Peer sexual harassment may cover a wide variety of behaviors, ranging from conduct which is invasive and disrespectful to conduct which is physically aggressive.

Sexual harassment within the University community with or without a power imbalance undermines the atmosphere of trust essential to the mission of the University.

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## B. Definition of Sexual Harassment

Sexual harassment is a form of sex discrimination which is illegal under both federal and state law. Harassment on the basis of gender is a violation of Title VII of the Civil Rights Act of 1964 and Title IX

of the Education Amendment of 1972. Sexual harassment can be verbal, visual, or physical. Although what constitutes sexual harassment will vary with the particular circumstances, it may be described generally as unwelcome sexual behavior which

1. is either explicitly or implicitly a term or condition of an individual's employment or education or
2. unreasonably interferes with an individual's performance in the employment or educational setting.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, display of sexual visuals, sexual audios, other verbal or physical conduct of a sexual nature. In addition, one of the following conditions must be met for the behavior to constitute sexual harassment:

1. Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of instruction, employment, or participation in a University activity; or
2. Submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting that individual; or
3. Such conduct unreasonably interferes with an individual's performance or creates an intimidating, hostile, or offensive working or learning environment.

Sexual harassment creates an intimidating, hostile or offensive work or learning environment when the sexual conduct is sufficiently severe, persistent or pervasive so that it limits an employee's or student's ability to participate in or benefit from the job or academic enterprise as usual, or otherwise alters the conditions of the employment or educational environment.

Sexual harassment may also occur where third parties are denied benefits or opportunities because of the existence of a sexual relationship between others or where third parties are forced to work or learn in an intimidating, hostile or offensive environment resulting from the sexual conduct of others.

In determining whether conduct constitutes sexual harassment, consideration will be given to the severity and/or pervasiveness of the conduct, judged by the standards of a reasonable person. Pervasiveness is determined by examining the totality of the circumstances, including:

1. the nature of the unwelcome sexual acts or words (generally, physical touching is more offensive than unwelcome verbal abuse);
2. the frequency of the offensive encounters;
3. the period of time over which all of the offensive conduct occurs; and
4. the context in which the sexually harassing conduct occurred. In determining what constitutes sufficiently pervasive, courts have held that acts of harassment cannot be occasional, isolated, sporadic or trivial.

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### **C. Examples of Conduct Which May Be Sexual Harassment**

Sexual harassment encompasses any pervasive sexual behavior that is unwelcome. Examples of verbal or physical conduct which may be sexual harassment include, but are not limited to:

1. *direct propositions of a sexual nature;*
2. sexual innuendoes and other seductive behavior, including subtle pressure for sexual activity such as repeated, unwanted requests for meals, drinks, or dates, and repeated inappropriate personal comments, staring, or touching;
3. direct or implied threats that submission to sexual advances will be a condition of employment, promotion, grades, etc.;
4. a pattern of conduct that would discomfort or humiliate, or both, a reasonable person, where the conduct includes one or more of the following:
  - a. unnecessary touching, patting, hugging or brushing against a person's body;
  - b. remarks of a sexual nature, such as comments about a person's clothing or body;
  - c. remarks about sexual behavior;
  - d. insulting sounds or gestures;
  - e. sexually explicit statements, questions, jokes, anecdotes, or graphic material.

(See L. Academic Freedom Statement);

5. a romantic relationship between (a) an instructor and a student or (b) a supervisor and a subordinate, if the constraints in J. Consensual Relationships are not followed;
6. a consensual relationship which
  - a. disadvantages third parties (i.e., third parties are denied benefits or opportunities because of the existence of a sexual relationship between others), or
  - b. creates a hostile, intimidating, or offensive working or learning environment for third parties;
7. sexual assault (which is also criminal behavior).

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## D. Applicable Policies

Several University policies identify various forms of unacceptable behavior which are applicable in cases of sexual harassment and outline sanctions and disciplinary procedures. These include:

1. The Faculty Code of Conduct (Academic Personnel Manual, Section 015), as adopted by resolution of the Academic Senate

2. The Resolution on Faculty-Student Relations Adopted by the Academic Assembly of the University of California Adopted by the Academic Assembly of the University of California on November 30, 1983
  3. Policies Applying to Other Academic Appointees (Academic Personnel Manual, Section 150)
  4. Policies Applying to Campus Activities, Organizations and Students, Section 100
  5. Personnel Policies for UC Staff Members
  6. Personnel Policies for UC Staff Members, Appendix II--Senior Management Personnel Policies
  7. Evaluation, Review and Appeal Procedures for Residents Appointed and Paid Through The University of California, Irvine, College of Medicine.
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## **E. Resources for Resolution of Complaints**

Enforcement of the UCI policy, its credibility and emphasis on early resolution require the University to direct individuals with concerns or questions about sexual harassment to individuals who have been trained to handle these matters.

Administrators at UCI, including Vice Chancellors, Deans, Directors, Department Chairs, and administrative department heads are responsible for understanding and implementing the campus sexual harassment policy and procedures. Their responsibilities include listening to concerns of faculty, staff, and students; seeking a resolution of the issues, when appropriate; and guiding individuals with concerns to personnel on campus who are trained to assist in complaint resolution. In meeting their responsibilities described above, administrators may solicit the assistance of the Sexual Harassment Officer.

In addition, designated individuals on the campus will be trained to handle sexual harassment issues and complaints. These designated individuals include the Sexual Harassment Officer (SHO) and the Sexual Harassment Advisors (SHA). Their functions are as follows:

1. The Sexual Harassment Officer is responsible for the campus sexual harassment program including compliance with the sexual harassment policy. This includes implementation of the sexual harassment complaint resolution procedures; development of the sexual harassment prevention education program for students, faculty, and staff during the year; and preparation of an annual report of the cases processed under these procedures.

The SHO is available to assist students, faculty, and staff with the resolution of any concern about behavior which might be sexual harassment. In this role, the SHO will:

- a. Coordinate recruitment, training, and evaluation of performance of the Sexual Harassment Advisors;
- b. Manage activities of the Sexual Harassment Advisors;
- c. Coordinate sexual harassment education program on campus and at the Medical Center;

- d. Provide information about sexual harassment and options for addressing it;
- e. Provide information about applicable University policies and procedures;
- f. Assist with informal resolution of complaints;
- g. Mediate complaints or refer for mediation;
- h. Receive and investigate formal complaints;
- i. Prepare annual report of cases;
- j. Keep records related to sexual harassment complaints.

The SHO may assign responsibility for the completion of duties outlined under this Policy and related Procedure as needed.

**2. Sexual Harassment Advisors** report to the SHO. The SHAs are members of the campus community who will be trained to assist students, faculty, and staff with concerns about sexual harassment. The SHAs are knowledgeable about applicable laws, University policies and procedures, options available for resolution of complaints, and confidentiality requirements. They will be given release time to fulfill their responsibilities. Non-exempt employees serving as SHAs shall be compensated for overtime in accordance with applicable policy and bargaining agreements. The SHAs will:

- a. Provide information about options, including mediation, which may be undertaken without filing a formal complaint;
- b. Provide assistance with informal resolution of complaints;
- c. Refer the complainant to the SHO if the complainant chooses to file a formal complaint.

The listing of current SHAs is maintained on the Sexual Harassment Prevention Web site.

**3. Vice Chancellors, Deans, Directors, Department Chairs, and Administrative Department Heads** are responsible for ensuring that the environment in their units is free of sexual harassment. They are a resource for problem solving within their units. They are responsible for assisting employees and/or students seeking information about sexual harassment and ways to address it. They may be called upon to assist the administration in bringing disciplinary charges against a faculty member or student or for disciplining a staff member. Because of the serious and sensitive nature of sexual harassment Vice Chancellors, Deans, Directors, Department Chairs, and administrative department heads may refer persons with inquiries or complaints related to sexual harassment to one of the SHAs or to the SHO.

**4. Sexual Harassment Anonymous Call Line.** All members of the UCI community with concerns about sexual harassment are encouraged to seek information and advice by calling the Sexual Harassment Anonymous Call Line (949) 824-7037. In many instances, advice can be provided on effective ways to resolve harassment problems informally.

## **F. Retaliation**

Threats, other forms of intimidation, and retaliation against a faculty member, student or staff employee for bringing a complaint of sexual harassment or for assisting another in bringing a complaint are prohibited. Retaliation is itself a violation of University policy and the law, and is a serious offense. Complaints of retaliation may be brought through the informal or formal sexual harassment complaint procedures. Acts of retaliation may result in discipline.

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## **G. Intentionally False Charges**

Because sexual harassment frequently involves interactions between the parties which are not witnessed by others, complaints of sexual harassment cannot always be corroborated by witnesses. Lack of corroborating evidence should not discourage complainants from bringing complaints to the University and seeking relief through the procedures outlined above. However, charges found to have been intentionally dishonest or made maliciously without regard for truth may subject complainants to disciplinary action.

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## **H. Confidentiality Statement**

An inquiry regarding sexual harassment or a complaint that sexual harassment has occurred may result in the gathering of extremely sensitive information about individuals. UCI is committed to protecting the privacy rights of all individuals in the University community and honors those rights to the extent allowable by law (See UC Business and Finance Bulletin RMP 8, Legal Requirements on Privacy of and Access to Information and Policies Applying to Campus Activities, Organizations, and Students, 130.00 Policies Applying to the Disclosure of Information from Student Records). California law expressly provides constitutional and statutory protection for the privacy of individuals. The right of privacy includes both limitations on disclosure of personal information about an individual and an individual's right of access to information about him or herself. The processing of sexual harassment complaints often results in a conflict of privacy concerns between the complainant and the accused, which calls for a balancing of privacy interests of each.

Because the University is required by State and Federal laws to take appropriate action to ensure an educational and employment environment that is free of sexual harassment, the University can never give an absolute guarantee that the information provided by an individual will remain confidential. While the confidentiality of the information received, the privacy of the individuals involved, and the wishes of the complainant regarding action by the University cannot be guaranteed, they will be protected and honored to as great a degree as is legally possible. The expressed wishes of the complainant, the accused, and witnesses regarding confidentiality will be considered within the context of the University's legal obligation to insure that sexual harassment is stopped, and with full consideration of the charged party's right to obtain information.

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## **I. Due Process Statement**

UCI's Sexual Harassment Policies and Procedures incorporate due process protections provided by the State and Federal constitutions. The essence of due process protection is twofold: the accused's right to notice of the action to be taken and the basis for the action, and the right to respond. Accordingly, in response to a sexual harassment complaint, the University makes findings related to an allegation or

intends to take an action which may result in discipline or corrective action against an individual, that individual has the right to understand the nature of the allegations, including who brought them, and the right to respond to those allegations. The nature of the right to notice and to respond are found in the various faculty, student, and staff policies relating to discipline and corrective actions. Generally, faculty members, and students have the right to a hearing *before* a disciplinary sanction can be imposed, and staff have the right to grieve any corrective action *after* it has been imposed upon them. The nature of the right to notice and to respond are found in the various faculty, student, and staff policies and collective bargaining agreements relating to corrective action, discipline, and dismissal.

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## **J. Consensual Relationships**

It is generally recognized that sexual relations between students and faculty members are fraught with the potential for exploitation. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in an academic or evaluative role, make voluntary consent by the student suspect. Even when both parties initially have consented, the development of a sexual relationship renders both the faculty member and the institution vulnerable to possible later allegations of sexual harassment in light of the significant power differential that exists between faculty members and students.

In their relationships with students, members of the faculty, teaching assistants, and other individuals with supervisory responsibilities over students, are expected to be aware of their professional responsibilities and avoid apparent or actual conflict of interest, favoritism, or bias. When a sexual relationship exists, effective steps should be taken to ensure unbiased evaluation or supervision of the student. Faculty members should be aware of the Resolution on Faculty-Student Relations, adopted by the Academic Assembly in 1983. (See A. Policy.)

The concerns expressed in this section apply equally well to other relationships between University employees where a power differential exists, such as that between a supervisor and an employee.

It is always the responsibility of the faculty member or the supervisor, not the student or employee, to maintain appropriate professional boundaries.

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## **K. Records and Documentation**

It is essential for the University to maintain accurate records relating to complaints of sexual harassment and of the University's actions taken in response to these complaints. There are at least three reasons for maintaining such records. First, the University is required by federal and state law to insure that the employment and educational environment is free of sexual harassment. At times federal and state agencies, such as the Equal Employment Opportunity Commission, the Office of Civil Rights, or California's Department of Fair Employment and Housing, either in response to a complaint or in a routine compliance review, will inquire into the nature and extent of sexual harassment complaints on campus, as well as the University's response to the complaints. Accurate record keeping is necessary to establish that the campus is in compliance with relevant statutes and regulations. Second, the University must take appropriate action in cases of repeat offenders. In order to document who the repeat offenders are, adequate records must be maintained. Third, it is important for educational purposes for the University community to have annual reports outlining the existence of, and institutional response to, allegations of sexual harassment on the campus. The University's record collection and retention policy is based on these specific concerns and interests.



The Sexual Harassment Officer shall be the office of record for records relating to sexual harassment complaints, investigations, and disposition. As custodian of record, the SHO will retain the records of the activities of the Sexual Harassment Advisors, the reports of all investigations, and records relating to any corrective or disciplinary actions taken in response to a sexual harassment complaint. The SHO, in consultation with the Executive Vice Chancellor and the Office of the General Counsel, will establish what types of records will be maintained and for how long. Access and disclosure of records will be governed by the relevant privacy statutes and by University policy. (See UC Business and Finance Bulletin RMP 8, Legal Requirements on Privacy of and Access to Information and Policies Applying to Campus Activities, Organizations, and Students, 130.00, Policies Applying to the Disclosure of Information from Student Records.)

The information contained in records maintained by the SHO will be used to:

1. compile anonymous statistical information for educational or reporting purposes;
2. identify areas in which sexual harassment advisors would benefit from additional assistance;
3. identify individuals or units where additional action, assistance, or training might be beneficial; and
4. identify individuals who exhibit a pattern of repeated sexual harassment so appropriate action may be taken.

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## L. Academic Freedom and Freedom of Speech

As participants in a public university, the faculty, staff, and students of the University of California enjoy significant free speech protections found in the First Amendment of the United States Constitution and Article I section I of the California Constitution. The right of *academic freedom* includes a special area of protected speech. Consistent with the principles of academic freedom, course content and teaching methods remain the province of individual faculty members. Academic freedom, however, is not limitless. Academic freedom does not protect classroom speech that is unrelated to the subject matter of the course or in violation of federal or state antidiscrimination laws. Some speech may constitute environmental sexual harassment. If a faculty member engages in unwelcome sexual behavior that has the purpose or effect of unreasonably interfering with a student's academic performance or creates a hostile and intimidating academic environment, then it may constitute environmental sexual harassment.

The University must balance these two significant interests: the right of academic freedom and the right to be free from sexual harassment. The First Amendment protections, including those of academic freedom, are not absolute. When a faculty member raises academic freedom as a defense against charges of sexual harassment, the University must examine the nature and context of the faculty member's behavior. A key to this examination is determining whether the behavior of the faculty member is related to his or her legitimate academic judgments within the context of furthering the institution's legitimate mission.

Nothing in UCI's Sexual Harassment Policy should be construed to prevent faculty members from rigorously challenging fundamental beliefs held by students and society. These challenges should be done in a manner that, in the professional judgment of the faculty member, is most pedagogically advisable. Indeed, this is at the core of academic freedom; however, faculty members may not interject

into the academic setting a sexual element that is unrelated to any legitimate educational objective. Nor, may a faculty member create, or allow, the educational setting to be so sexually charged, that our students are prevented from effectively participating in the academic environment.

UCI is committed to insuring that the academic freedom rights of our faculty are secure, and to insuring our students an academic environment free of sexual harassment.

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